

**ORDER AND RESOLUTION OF MILAM COUNTY COMMISSIONERS COURT  
ESTABLISHING GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENTS  
BY MILAM COUNTY, TEXAS**

**WHEREAS**, the Milam County Industrial Development Corporation recommends that Tax Abatements be initiated in the County of Milam; and

**WHEREAS**, the Milam County Commissioners Court finds that Tax Abatements, in accordance with the "Guidelines and Criteria Governing Tax Abatements by Milam County, Texas," attached hereto as Exhibit "A" and incorporated herein for all purposes ~~as Exhibit A; -and~~

~~WHEREAS, the Commissioners Court finds that such Guidellines and Criteria~~ contributes to the economic development of Milam County; ~~and~~

~~WHEREAS, said Guidelines and Criteria set forth the and is in Exhibit "A" of the po~~ policies and objectives of the County as authorized in Chapter 312 of the Texas Tax Code, ~~and~~ will assist the County in the achievement of its objectives to create jobs for the citizens of the County, build the tax base of the County, ~~provide a means to objectively evaluate proposals for economic development and tax abatements related to such development,~~ and provide an attractive environment for businesses to build capital intensive projects within Tax Abatement Reinvestment Zones; and

**WHEREAS**, state law requires re-adoption of guidelines governing Tax Abatements every two years; ~~and-~~

**WHEREAS**, the Milam County Commissioners Court believes it necessary to adopt Tax Abatement Guidelines and Criteria for the County; and

**NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF MILAM COUNTY, TEXAS THAT:**

**Section 1.** Guidelines and Criteria Governing Tax Abatements Adopted. In accordance with the requirements in Section 312.002 of the Texas Tax Code, the Milam County Commissioners Court hereby adopts the "Guidelines and Criteria Governing Tax Abatements by Milam County", attached hereto as Exhibit "A" and incorporated herein for all purposes as if set forth in full.

**Section 2.** No Limits. Adoption of the Guidelines and Criteria adopted in Section 1 ~~herein does not:~~

(1) Limit the discretion of the Milam County Commissioners Court to decide whether to enter into a specific Tax Abatement agreement;

(2) Create, nor shall it be construed to create, any property, contract, or other legal right in any person or entity to have the Milam County Commissioners Court consider or grant a specific application or request for Tax Abatement.

**Section 3.** Effectiveness of Guidelines. The Guidelines and Criteria adopted in Section 1 herein shall be effective for two (2) years from the effective date of this Order. During that period, the said Guidelines and Criteria Governing Tax Abatements

may be amended or repealed only by a vote of three-fourths of the members of the Milam County Commissioners Court.

**Section 4.** Effective Date. This Resolution and Order shall become effective upon passage and approval.

**Section 5.** Severability. If any provision, section, subsection, sentence, clause or phrase of this Resolution and Order, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or for any reason unenforceable, the validity of the remaining portion of this Resolution and Order or its application to any person or set of circumstances shall not be affected thereby, it being the intent of the Commissioners Court of Milam County, Texas in adopting this Resolution and Order that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity, and all provisions are declared severable for that purpose.

PASSED and APPROVED this \_\_\_<sup>th</sup> day of \_\_\_\_\_ 2019.

**MILAM COUNTY:**

\_\_\_\_\_  
**Steve Young, Milam County Judge**

**ATTESTED:**

\_\_\_\_\_  
**Jodi Morgan, Milam County Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Bill Torrey, Milam County Attorney\***

\*By Law, the County Attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval of their own respective attorneys.

**EXHIBIT A**  
GUIDELINES AND CRITERIA  
GOVERNING TAX ABATEMENTS  
MILAM COUNTY, TEXAS  
\_\_\_\_\_, 2019

**SECTION 1: GENERAL PURPOSE AND OBJECTIVES**

The County of Milam is committed to enhancing the competitiveness and the expansion potential of the County; to attracting and encouraging new industry and investment; to improving Milam County and its infrastructure which attracts and supports development; and to expanding the tax base, employment opportunities, and the overall quality of life for its citizens. This document describes the Guidelines and Criteria to opportunities Milam County may consider in attempts to assert positive economic development. Nothing herein shall imply or suggest that the County of Milam is under obligation to afford these opportunities to any applicant. All applicants shall be reviewed on a case-by case basis. The customized design of a total incentives package is intended to allow maximum flexibility in addressing the unique concerns of each applicant while enabling Milam County to respond to the changing needs of the County. Consideration will be given to applicants according to the criteria listed in this document and to Chapter 312 of the State Tax Code.

**1.1 Purpose:**

Chapter 312 of the Texas Tax Code allows, but does not obligate or require, the County to grant a Tax Abatement on the value added to a particular property on account of a specific development project that meets the eligibility requirements set forth in these Guidelines and Criteria. In order for the County to enter into Tax Abatement agreements, the County is required to establish guidelines and criteria governing Tax Abatements and to pass a resolution stating that the County elects to become eligible to participate in Tax Abatement.

**1.2 Objective:**

The County of Milam is committed to the promotion of high quality developments in all parts of Milam County and to ongoing improvement in the quality of life for all citizens. These objectives are generally served by the enhancement and expansion of the local economy, the County of Milam, will on a case-by-case determination, give consideration to providing Tax Abatement as stimulus for economic development within the boundaries of the County of Milam. It is herein proclaimed to be a policy of the County of Milam to make available Tax Abatement for both new facilities and for the Expansion or Modernization of existing structures. It is further recognized to be a policy of Milam County that the consideration of Tax Abatement will be made in accordance with the procedures and criteria set forth herein. Nothing herein shall imply, suggest or in any way be interpreted to obligate the County of Milam to provide a Tax Abatement to any applicant.

### **1.3 General Eligibility Criteria:**

A Tax Abatement can only be granted to persons or entities eligible for Tax Abatement pursuant to Section 312.402 of the Texas Tax Code, which persons or entities as of the effective date of these Guidelines and Criteria are:

- (i) the owner of taxable real property located in a reinvestment zone;
- (ii) the owner of a leasehold interest in tax-exempt real property located in a Tax Abatement reinvestment zone;
- (iii) the owner of a leasehold interest in real property located in a Tax Abatement reinvestment zone; or
- (iv) the owner of tangible personal property located in a reinvestment zone.

### **1.4 General Exclusions and Limitations:**

#### **1.4.1 Leases of Real Property**

A person or entity seeking Tax Abatement on real property that is leased from a third party should be advised that, pursuant to state law, the County of Milam can only abate taxes on the increased value of the taxable leasehold interest in the real property, if any, and the increase in value of taxable improvements and tangible personal property located on the real property and subject to the leasehold interest, if any. Before applying for a Tax Abatement from the County of Milam, such persons or entities should seek professional and legal guidance, and may wish to consult with the appraisal district having jurisdiction over the property in question, as to whether their development projects will result in a taxable leasehold interest in the property and, if so, the anticipated value of that leasehold interest.

### **SECTION 2: DEFINITIONS.**

As used within these Guidelines and criteria, the following words or phrases shall have the following meanings:

**2.1 "Abatement" or "Tax Abatement"** means the temporary, full or partial exemption from ad valorem taxes of certain eligible taxable real and in some cases tangible personal property and/or improvements located in a Reinvestment Zone designated for economic development purposes.

**2.2 "Added Value"** means the increase in the assessed value, as compared to base year value, of an eligible property as a result of "Expansion" or "Modernization" of an existing Facility or construction of a "new Facility." It does not mean or include "Deferred Maintenance".

**2.3 "Agreement"** means a contractual agreement between an owner and/or lessee of eligible property and the County of Milam for the purposes of Tax Abatement.

**2.4 "Base Year Value"** means the assessed value of eligible property as determined by the Milam County Appraisal District located in a reinvestment zone on January 1 of the year in which the Agreement is executed.

**2.5 "Deferred Maintenance"** means improvements necessary for continued operations which do not improve productivity or alter the process technology.

**2.6 "Affected Jurisdiction"** means Milam County and every other taxing unit that includes, within its boundaries, property located within a proposed or existing reinvestment zone.

**2.7 "Economic Life"** means the number of years a property improvement is expected to be in service in a reinvestment zone.

**2.8 "Expansion"** means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.

**2.9 "Facility"** means property improvements completed or in the process of construction which together compromise an integral whole.

**2.10 "Manufacturing Facility"** means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

**2.11 "Modernization"** means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the Economic Life of the facilities. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of Deferred Maintenance.

**2.12 "New Facility"** means a property previously undeveloped, which is placed into service by means other than or in conjunction with an Expansion or Modernization.

**2.13 "Other Basic Industry"** means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside Milam County, Texas. Corporate Home Office is included in this definition.

**2.14 "Other Basic Industry Facility"** means property, previously undeveloped, which is placed into service by means other than or in conjunction with Expansion or Modernization.

**2.15 "Owner"** means the owner of property subject to Abatement. If the eligible property is constructed or located on a leased property, the owner shall be the party which owns the property eligible for a Tax Abatement. The other party to the lease may join in the execution of the Agreement but shall not be obligated to assure performance of the party receiving the Abatement,

**2.16 "Permanent Full-Time Job"** means a new employment position created by a business that provides a regular work schedule of at least 35 hours per week or 1820 hours of

regular employment per year to a Milam County, Texas resident and maintains the employment position during the term of the Abatement agreement.

**2.17 "Employee"** means a person whose employment is both permanent and fulltime, who works for and is an employee of the Owner or an employee of a Contractor, who works a minimum of 1,750 hours per year exclusively within the reinvestment zone, who receives industry-standard benefits, and whose employment is reflected in the Owner's (and Contractor's, if applicable) quarterly report filed with the Texas Workforce Commission ("TWC"); but excluding any direct contract (seasonal, part-time, and full-time equivalent).

**2.18 "Tax Abatement Reinvestment Zone"** means any real property within Milam County, Texas which has been designated as a reinvestment zone, by the Milam County Commissioners Court and may include any land within the City of Rockdale, that has been designated as a reinvestment zone by Rockdale City Council.

### SECTION 3: ABATEMENT AUTHORIZED

**3.1 Authorized Facility:** Abatement may be eligible for new facilities and improvements to existing facilities for the purpose of Modernization or Expansion.

**3.2 Creation of New Value:** Abatement may only be granted for the Added Value of eligible property improvements based on valuations as determined by the Milam County Appraisal District and subject to and listed in an Abatement agreement between County and the property owner and lessee, if required, subject to such limitations as said jurisdiction may require.

**3.3 Eligible Property:** Abatement may be extended to the Added Value of real and tangible personal property as noted in Section 3.6.

**3.4 Ineligible Property:** The following types of property shall be fully taxable and ineligible for Abatement: Land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; Deferred Maintenance investments; property with an economic life of less than 15 years; property owned or used by the state of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the state of Texas, or any property exempted by local, state or federal law. When such exempted property includes manufacturing machinery and equipment listed in the Investment Budget (as required in "Application"), then the value of such property may not be included toward the achievement of investment or valuation thresholds set out in the Agreement.

**3.5 Types Of Industry:** In keeping with the broad based approach to economic development, Agreements will not be restricted to any particular type of industry. Preference will, however, be given to manufacturing and any other type of industry which provides relatively

**Commented [BB1]:** Definition of Employee working a minimum of 1,750 would be, by the definition of a "full time" employee something less, i.e. a part-time employee. Seems the hour requirement should be consistent. Many employees in the alternative energy sector will not reside in your county, and may not therefore be able to meet the "exclusively within the reinvestment zone" requirement.

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**Commented [BB2]:** Need to see the designation of reinvestment zone Order, newspaper advertising, taxing entities notice.

higher wages. In keeping with obtaining the highest cost-benefit, Tax Abatements will be granted on the basis of (a) new jobs and (b) additional investments, for a maximum term of 10 years.

**3.6 Period and Percentage of Abatement:**

**THE BASIC FORMULA**

New Permanent Full Time Jobs	Added Value in Real Property, as assessed by Milam County Appraisal District	Percent of Abatement	Term
50 to 100 jobs	\$1 million up to \$2.5 million	25%	5 years
101 to 150 jobs	over 2.5 million up to \$5 million	50%	5 years
151 to 200 jobs	over \$5 million up to \$10 million	75%	5 years
Over 200 jobs	Over \$10 million	100%	5 years

**Commented [BB3]:** As you know, alternative energy projects engage many employees during construction, few during operations. As a consequence, your "Basic Formula" is difficult to apply, and it limits abatement to a total of five years. I would recommend dropping the formula approach.

**Commented [BB4]:** Because a project with a value of less than \$10 Million will not result in much benefit to the County, we recommend having a "minimum value" floor of \$10M. Your abatement formula will have you flooded with applications by small operators whose abatement, if granted, will produce very little net value to the County.

In cases where the required additional investment exceeds \$10 million and the number of jobs is not expected to be met, an Abatement may be allowed utilizing the following criteria:

New Permanent Full Time Jobs	Added Value in Real Property, as assessed by Milam County Appraisal District	Percent of Abatement	Year of Abatement
At least 5 jobs	Over 10 million	90%	1
		80%	2
		70%	3
		60%	4
		50%	5
		40%	6
		30%	7
		20%	8
		10%	9
		0%	10

**Commented [BB5]:** As noted above, this chart starts at \$10 Million, with a 90% abatement. Because some projects will have accelerated depreciation (solar) by law, your 90% abatement on a descending scale will result in very little net benefit to the County. Few jobs, little revenue.

**3.7. Living Wage Requirement:** In order to count as a permanent full-time job under this Tax Abatement program, the job should pay Employees wages at a minimum level which is equal to five dollars (\$5.00) above the U.S. minimum wage in effect at the time of the Agreement, Additional compensation, such as commissions and mileage, will be taken into consideration and will be included in the wages.

### 3.8 Other General Guidelines:

**3.8.1** Companies shall pay permanent full time Employees with at least 50% of their health benefits.

**3.8.2** Applicable work must be offered to local companies for the Expansion of existing facilities as well as new facilities.

**3.8.3** Efforts to hire must be "performance based" to provide cost benefit advantages to Rockdale and Milam County.

**3.8.4** Applicant must not permit outside companies to unfairly compete with local companies in the same business in the local market: competing companies may be considered if 75% of their customers are outside Rockdale/Milam County, or if any other measures are offered which are judged to make the companies compatible with County of Milam interests.

**3.8.5** The contracts must be effectively protected by cancellation, recalibration and "claw-back" provisions which would ensure the return of the community's funds if the company's default on their part of the Agreement. There should however, be no levy of penalties above repayment of actual local costs.

### 3.9 Negotiation and Variance

**3.9.1** Notwithstanding anything to the contrary in these Guidelines, the Milam County Commissioners Court may, depending upon the applicant, grant Tax Abatements which differ from the Basic Formula contained in Section 3.6 taking into consideration the cost benefit, company's financial statements or D&B rating, past business history, nature of the production process, environmental hazards, cost breakdown of the investment into land, building, equipment, probable project status at the end of 10 years, percent of hiring of local workers, and benefits to be paid to local workers and other criteria deemed appropriate by Milam County Commissioners Court.

**3.9.2** The Milam County Commissioners Court further reserves the right to vary the term and percent of Abatement from the Basic Formula contained in Section 3.6, on a case by case basis, where the applicant shows unique-circumstances that, in the opinion of Milam County Commissioners Court, meet the economic development goals and objectives of Milam County, Texas.

## **SECTION 4: APPLICATION**

**4.1** Any owner of taxable property in Milam County may request the designation of a reinvestment zone and a Tax Abatement agreement by filing a written application with the County of Milam.

**Commented [BB6]:** Much of the alternative energy sector jobs are specialized, and unless you have something similar in the community, it will be difficult for local companies to have the experience to compete...



4.2 The application shall be signed by the Owner accompanied by

~~4.2.14.3~~ a general description of the proposed use and the general nature and extent of the Modernization, Expansion or new improvements to be undertaken;

~~4.2.24.3.1~~ a descriptive list of the improvements which will be a part of the Facility;

~~4.2.34.3.2~~ an estimate of the cost of the improvements;

~~4.2.44.3.3~~ an estimate of the number of Employees during construction, and thereafter, to operate the Facility;

4.2.5. a map, metes and bounds or other valid legal property description of the property proposed as a reinvestment zone;

4.2.6 a time schedule for undertaking and completing the planned improvements; and a proposed program for the recruitment of local Employees in the construction and operation of the Facility or facilities together with a statement affirming the applicant's commitment to equal opportunity hiring, at all levels, and

4.2.7 a plan to implement and ensure such hiring.

4.3 In the case of Modernization, a statement of the assessed value of the Facility separately stated for real and personal property shall be given for the tax year immediately preceding the application.

4.4 The application shall provide such financial and other information as required by the County to enable it to evaluate the financial capacity of the applicant. In the case of an application based on job retention, the applicant shall include sufficient information to verify the potential of job loss that would occur without Abatement.

4.5 If the County intends to act favorably on the application and enter into an Agreement, it shall do so in writing with the owner of the taxable real property located in an area designated as a reinvestment zone to exempt from taxation all of the increase in the value of the property over its value in the year in which the Agreement is executed.

4.6 The County may not enter into a Tax Abatement agreement unless it finds that the terms of the Agreement, and the property subject to the Agreement, meet the applicable provisions of these "Guidelines and Criteria". Not later than the seventh day before the date on which the County enters into such an Agreement, the County Judge, or an officer or employee of the County designated by him, shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the Agreement is located a written notice that the County intends to enter into an Agreement. The notice shall be placed in the mail, postage paid, properly addressed, and sent by certified mail with return receipt requested.

4.7 A resolution designating an area as a reinvestment zone may not be adopted by the County until the Milam County Commissioners Court has held a public hearing on the designation.

**Commented [BB7]:** Recent revisions to Chapter 312 require that the notice required to create a zone identify the parcels of land within the zone, and the identity of the owners of such parcels.

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- 471. It also must be found that the area of the proposed reinvestment zone is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and would contribute to the economic development of the County.
- 472. At the hearing, interested persons are entitled to speak and present evidence for or against the designation.
- 473. Not later than the seventh day before the date of such hearing, notice of the hearing must be published in a newspaper having general circulation in Milam County. Said notice shall be delivered in writing to the presiding officer of the governing body of each taxing unit that includes, within its boundaries, real property that is to be included in the proposed reinvestment zone.
- 474. The notice shall be placed in the mail, postage paid, and properly addressed to the appropriate presiding officer.
- 475. The County shall not establish a reinvestment zone for the purpose of tax Abatement if it finds that the request for the Abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed Modernization, Expansion or new Facility.

#### **SECTION 5: AGREEMENT**

After the hearing the Commissioners Court shall adopt a resolution finding that the proposed Agreement filed with the resolution, a copy of which is to be attached thereto, meets the applicable provisions of these "Guidelines and Criteria". The resolution shall also authorize the execution of the Agreement with the Owner, to include provisions for:

5.1 The exemption from taxation of all the increases in value of the property, over its value in the year in which the Agreement was executed for the period of time provided.

52 A general description of the kind, number, and location of the proposed improvements of the property;

53 Access to and inspection of property by County employees to ensure that the improvements or repairs are made according to the specifications and conditions of the Agreement;

5.4 Limiting the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;

55 Recapturing property tax revenue lost as a result of the Agreement if the owner of the property fails to make the improvements or repairs as provided by the Agreement.

5.6 Total estimated cost of the improvements and employment estimates.

5.7 The commencement date, the termination date of the Tax Abatement and the date taxes are first due the County.

5.8 A provision that the Agreement shall be effective when executed by all parties and upon the final passage of an ordinance designating the reinvestment zone. and

5.9 A provision that the applicant is required to file an annual report to the County describing the efforts of the applicant toward local hires and using local vendors and subsequent to completion, progress on construction.

#### **SECTION 6: RECAPTURE**

6.1 In the event that the Facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion, or other casualty or accident or natural disaster for a period of one year during the Abatement period, then the Agreement shall terminate and so shall the Abatement of the taxes for the calendar year during which the Facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the Affected Jurisdiction and other taxing agencies within sixty days from the date of termination.

6.2 Should the County of Milam determine that the company or individual is in default according to the terms and conditions of its Agreement, the County shall notify the company or individual in writing at the address stated in the Agreement, and if the default is not cured within sixty (60) days from the date of such notice ("Cure Period"), the Agreement may be terminated.

6.3 In the event that the company or individual (1) allows any ad valorem taxes owed the County of Milam or affected jurisdictions to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or (2) contest; or violates any of the terms and conditions of the Abatement agreement and fails to cure any default within the Cure Period, the Agreement may then be terminated and all taxes previously abated, by virtue of the Agreement, shall be recaptured and paid within sixty (60) days of the termination.

#### **SECTION 7: ADMINISTRATION**

7.1 Each year, the company or individual receiving Abatement shall furnish the Chief Appraiser of Milam County an Annual Certification, with such information as may be necessary for the Abatement. The Chief Appraiser will annually determine the assessment of the real and personal property

comprising the reinvestment zone and notify the affected jurisdictions of the amount of the assessment.

7.1 Upon completion of construction, Milam County shall annually evaluate each Facility receiving Abatement to ensure compliance with the Agreement.

#### **SECTION 8: ASSIGNMENT**

Tax Abatement may be transferred and assigned by the holder to a new owner or lessee of the same Facility upon the approval by resolution of the Commissioners Court, subject to the financial capacity of the assignee, and provided all conditions and obligations in the Tax Abatement agreement are guaranteed by the execution of a new contractual agreement with the County of Milam. No assignment or transfer shall be approved if the parties to the existing

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Agreement, the new owner or new lessee are liable to the County of Milam or any affected jurisdiction or other taxing agency for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

**SECTION 9: SUNSET PROVISION**

These Guidelines and Criteria are effective for two years from the date adopted. During that period, the "Guidelines and Criteria" may be amended or repealed only by a vote of three-fourths of the members of the Commissioners Court.

**SECTION 10: LEGAL NOTICE TO POTENTIAL APPLICANTS**

The adoption of these guidelines and criteria by the County does not and shall not:

**10.1** Limit the discretion of the County to decide whether to enter into a specific Tax Abatement agreement;

**10.2** Limit the discretion of the County to delegate to its employee the authority to determine whether or not the County should consider a particular application or request for Tax Abatement; or

**10.3** Create any property, contract, or other legal rights in any person to have the County consider or grant a specific application or request for Tax Abatement.

**10.4** Waive or relinquish any immunity or defense on behalf of the County, its commissioners, offices, employees and agents as a result of the execution of a Tax Abatement agreement and/or the performance of the functions and obligations described herein.